K 1949.

File No. O. Prize Competition /49

Legal Department

A **BRANCH**

Subject:—Opinions under the Bombay Lotteries and Prize Competition Control and Tax Act—1948

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L.D.R.I. No. 1725
dt. 24.12.48.

Submitted:

Please see the Home Department note dt. 19.12.48 at pp.77-79 ante and the note of Secy. H.D. below it. The questions for R.L.A's consideration are:-

(1) Whether prize competitions appearing in (1) Sakal; (2) Swarajya and (3) Koot Katha for which no entrance fee is charged are covered by the Bombay Lotteries and Prize Competitions Control & Tax Act, 1948; and

(2) Whether prize competitions appearing in the newspapers published in this Province but conducted by promoters outside the Province but conducted by promoters outside the Province would require a license.

A "Coupon" is defined in clause (a) of sub-section (1) of section 2 of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 and definition of a prize competioon is contained in clause (d). In the prize competitions appearing in Sakal and other newspapers it appears, no coupon fee is charged. Nonetheless, the prize competition is unlawful unless a licence in respect thereof is obtained by the promoter, the promoters of the prize competitions appearing in Sakal and other papers would be required to take out a license.

I would remain a prize competition as under section 7 of the Act a prize competition

As regards (2): Please see R.L.A.'s opinion No. 8689 dt. 31st August 1939 where a similar question was considered. The definition of promoter has been dropped from the New Act, but as the prize competition is contained in a news-paper printed and published in the Province, it would be unlawful under section 7 of the Act

unless a licence in respect thereof is obtained.

Office of the R.L.A.

Prize competitions.

Bombay Lotteries and Prize Competitions Control and Tax Act, 1948,

The view taken by Secretary, H.D., on both the points is correct.

Sd/- P.M.Lad
5-3
Remembrancer of Legal Affairs.

U.R. to H.D., No. 2635 , dated the 9th March 1949.

V.M.D./5-6
40.

Office of the R.L.A.

Prize Competition contained in a newspaper published at Bangalore.
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Bombay Lotteries and Prize Competitions Control and Tax Act, 1948.

It appears from the letter addressed to the Commissioner of Police by Messrs. Gagrat & Co., Solicitors, that Messrs. M.M.D.C. Ltd. carrying on business at Bangalore in the Mysore State have been conducting a prize competition known as M.M.D.C. Pools, which prize competition is contained in the newspaper known as "The Sporting Star" also published at Bangalore. Apparently they have a branch office in Bombay where they conduct the business. Messrs. Gagrat & Co. maintain that no action can be taken in respect of this branch office under the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948, which, they say, does not apply. The R.L.A. is requested to advise.

2. A prize competition is only one variety of lottery, which has been compendiously defined as a scheme for the distribution of money by chance. The word "lottery" was not advisedly defined in the Act lest such definition may prove too restrictive for human ingenuity. In order to leave no room for doubt that prize competitions are included in lotteries, it was specifically provided in section 8 that punishment therein prescribed was without prejudice to the liability, if any, to be proceeded against under the preceding provisions of this Act relating to lotteries. The prize competition now under consideration can, therefore, be treated as a lottery provided it consists of a scheme for the distribution of prizes by chance.

3. If it be a prize competition of that kind, it is no doubt true that qua prize competition no action can be taken against it under the Act; for, the very definition of a prize competition as given in section 2(d) of the Act does not include a prize competition contained in a newspaper printed and published outside

the Province of Bombay. The question of applying any of the provisions concerning prize competitions contained in the Act such as section 7 or 8 would not, therefore, arise. Nonetheless the prize competition will have to be treated as a lottery for the reasons given above, and the provisions relating to lotteries would become applicable. In particular section 4 of Act makes it clear that the provisions contained therein apply to a lottery, whether it be promoted in the Province or elsewhere. Under clause (g) of sub-section (1) of section 4 every person who uses any premises or permits any premises to be used for purposes connected with the promotion or conduct of a lottery becomes liable to punishment; and under section 18 it shall be lawful for a police officer, subject to the restrictions given therein, to enter any place which he has reason to suspect is used for purposes connected with the promotion or conduct of any lott ry and to search such place, to take into custody persons and seize things.

4. This legal position may be explained to Messrs. Gagrat & Co., and if they have any further representation to make, the R.L.A.'s advice may be sought again.

Sd/- P.M.Lad.
23-3
Remembrancer of Legal Affairs.

U.R. to H.D. No. 3234, dated the 24th March 1949.

V.M.D./5-6
4c.

Office of the R.L.A.

The word 'lottery" was advisedly not defined in the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948, lest such definition may prove in practice to be too restrictive for human ingenuity. The ordinary meaning of a lottery is a scheme for distribution of prizes by lot or chance, and it is obvious that the scheme described in the Collector's letter is a lottery. The argument advanced by the Collector only amounts to this that the case would not fall within clause (a) of sub-section (1) of section 4; but whereas before this Act, that clause was the only law governing lotteries under section 294A of the Indian Penal Code, we have now declared under section 3 of the Act all lotteries, subject to the provisions of the Act, to be unlawful; and in other clauses of section 4 we have created a number of offences which have no connection whatsoever with the actual physical 'drawing' of tickets or lots. It follo therefore, that the proposed scheme would be an unlawful lottery and would be hit by the several clauses of section 4(1) and the other provisions of the Act unless it is specially authorized by the Provincial Government under clause (c) of section 38 of the Act.

Sd/- P.M.Lad
4-2-
Remembrancer of Legal Affairs

V.M.D./5-6
4c.

R.I.No.4454 A 26-3-45

Submitted.

2. The E.D. states that :-

"Under sec. 3 of the Bombay lotteries and Prize Competitions Control and Tax Act, 1948, all lotteries except licensed private lotteries and licensed entertainment lotteries are unlawful. A lottery or a sweepstake ticket purchased from outside the Province would therefore be unlawful in this Province . sec. 4 of the Act, however does not provide for the possession of such a lottery for private purpose and it, therefore, appears that no action can be taken against the holder of such a lottery under the Act. "

The H.L.A. is requested to advise.

V.M.D./5-6
4c.

Office of the R.L.A.

Bombay Lotteries and Prize Competitions Control and Tax Act, 1948.
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Possession of lottery tickets.

The view taken by the Home Department is correct.

Sd/- P.M.Lad.
9-5

Remembrancer of Legal Affairs.

U.R. to H.D., No. 3903, dated the 11th April 1949.

V.M.D./5-6

R.I.No 6035 of 21.4.49.

Submitted :

2. In R.L.A's opinion No. 3903, dated the 11th April 1949 the R.L.A. had confirmed the H.D. view that a lottery or sweeps take ticket purchased from outside the Province is not made punishable under section 4 of the Bm Bombay Lotteries and Prize Competions Tax Act, 1948. Secretary H. D. doubts the earlier view taken by that office and observes :-

"It seems to me that the transaction like the one referred to by Mr. Bhatt would be covered by sect. 4(1)(f). In such a case there will be sending out of the Province some document recording the identity of the holder of a ticket as I do not see how the transaction can be compl about that. For the purposes of reply to Mr. Bha we may, I think say that the transaction will be an office. R.L.A. may see. "

V.M.D./6-6
4c.

Office of the R.L.A.

Bombay Lotteries and Prise Competitions Control and Tax, Act, 1948.

Section 4(1)(f)

R.L.A's opinion No. 3903 dated 11.4.1949.

On the assumption that a purchaser of a ticket of lottery, like Mr. Bhatt, is required to send out of this Province document recording the identity of the holder of of the ticket or of the chance in the lottery, his act in sending such document or in attempting to send such document would fall within the perview of clause (f) of section 4(1). But cases can be conceived where the purchaser may not be requir to send such a document out of this Province. In those cases the mere possession of a ticket would not be actionable. R.L.A's opinion No. 3903 dated the 11th April 1949 was confined only to the point of possession.

Sd/- P.M.Lad.
19.5

Remembrancer of Legal Affairs

U.R. to H.D. No. 5624 , dated the 20th May 1949

V.M.D./6-6
4c.